

Freedom of Speech and Co-operation

Response to Parliamentary Joint Committee on Human Rights inquiry
into

- whether the operation of Part IIA of the *Racial Discrimination Act 1975* (Cth) (including sections 18C and 18D) impose unreasonable restrictions on freedom of speech; and
- whether the complaints-handling procedures of the Australian Human Rights Commission should be reformed.

(November 2016)

David Griffiths, Co-operative Federation of Victoria, December 2016

Context

The Terms of Reference of the Parliamentary Joint Committee on Human Rights inquiry are limited in scope:

To inquire, and report to the Parliament by 28 February 2017, on the following matters:

1. Whether the operation of Part IIA of the Racial Discrimination Act 1975 (Cth) imposes unreasonable restrictions upon freedom of speech, and in particular whether, and if so how, ss. 18C and 18D should be reformed.
2. Whether the handling of complaints made to the Australian Human Rights Commission (“the Commission”) under the Australian Human Rights Commission Act 1986 (Cth) should be reformed, in particular, in relation to:
 - a. the appropriate treatment of:
 - i. trivial or vexatious complaints; and
 - ii. complaints which have no reasonable prospect of ultimate success;
 - b. ensuring that persons who are the subject of such complaints are afforded natural justice;
 - c. ensuring that such complaints are dealt with in an open and transparent manner;
 - d. ensuring that such complaints are dealt with without unreasonable delay;
 - e. ensuring that such complaints are dealt with fairly and without unreasonable cost being incurred either by the Commission or by persons who are the subject of such complaints;
 - f. the relationship between the Commission’s complaint handling processes and applications to the Court arising from the same facts.
3. Whether the practice of soliciting complaints to the Commission (whether by officers of the Commission or by third parties) has had an adverse impact upon freedom of speech or constituted an abuse of the powers and functions of the Commission, and whether any such practice should be prohibited or limited.
4. Whether the operation of the Commission should be otherwise reformed in order better to protect freedom of speech and, if so, what those reforms should be.

The Committee is asked, in particular, to consider the recommendations of the Australian Law Reform Commission in its *Final Report on Traditional Rights and Freedoms – Encroachments by Commonwealth Laws* [ALRC Report 129 – December 2015], in particular Chapter 4 – “Freedom of Speech”.

Limited Submission

This submission is limited in its scope and focusses, therefore, on Terms of Reference 1 Whether the operation of Part IIA of the Racial Discrimination Act 1975 (Cth) imposes unreasonable restrictions upon freedom of speech, and in particular whether, and if so how, ss. 18C and 18D should be reformed and the concluding paragraph to the terms of reference: In this reference, “freedom of speech” includes, but is not limited to, freedom of public

discussion, freedom of conscience, academic freedom, artistic freedom, freedom of religious worship and freedom of the press.

Freedom of speech is the right to articulate one's opinions and ideas without fear of government retaliation or censorship, or societal sanction but censorship is not only government censorship for freedom of speech gatekeepers determine what is published, broadcast and reported.

The right to freedom of expression is recognized as a human right under article 19 of the Universal Declaration of Human Rights and recognized in international human rights law in the International Covenant on Civil and Political Rights (ICCPR). Article 19 of the ICCPR states that "everyone shall have the right to hold opinions without interference" and "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". Article 19 additionally states that the exercise of these rights carries "special duties and responsibilities" and may "therefore be subject to certain restrictions" when necessary "[f]or respect of the rights or reputation of others" or "[f]or the protection of national security or of public order (order public), or of public health or moral worship and freedom

Freedom of speech is an essential basis for a democratic society but the focus on political, think-tank and media elites on 18C is essentially about their freedom of speech and ignores the importance of 18C and D, albeit imperfectly, to protect those who are susceptible to victimization by these same elites.

Freedom of speech is dependent on access to platforms for printing and broadcasting and reporting this freedom and who can exercise this freedom is dependant of gatekeepers who determine what and who is published and broadcast and reported whether it is mass media newspapers, radio stations, free-to-air television, subscription television and reports to government.

Ad nauseum the Murdoch newspapers and Sky News television in Australia decry the left-wing bias of the ABC and the Fairfax newspapers without acknowledging their own right-wing elitism. It is beside the point, of course, that the left-wing allegation against the ABC and the Fairfax newspapers is debatable although the comparison is based on the strident right-wing news and opinions of the Murdoch newspapers and Sky News. By implication, however, the right-wing pundits of the Murdoch newspapers and Sky News are also assuming that their right-wing assumptions are equated with self-evidently objectivity. That there are opinion-writers and commentators on Sky News, for example such as Kristina Keneally on Sky News does not disprove the right-wing bias but is paraded as an exception to refute the right-wing tendency.

Whether it is broadcasting or newspapers or reports, however, there is a common underpinning – the gatekeepers (e.g. editors and journalists) determine what is and who is published and broadcast. This is a gatekeeping function of deciding who has what freedom of expression in broadcasting and newspapers. Inclusion of individuals, groups and issues also leads to the exclusion of individuals, groups and issues and a process of determining how individuals, groups and issues are represented and reported in broadcasting and newspapers.

This process is obscured by a number of mythical claims – that news and opinions and views broadcast and published and reported have a superior self-evident merit and value, that what is broadcast and published and reported is determined by the self-evident quality and merit of individuals and groups and that what is published and broadcast and reported is determined by readers, viewers and listeners and self-evident assumptions and values.

Co-operation and Freedom of Speech

The co-operation option is constantly challenged for its relevance and values by freedom of speech gatekeepers.

This is exemplified in a submission to the Productivity Commission Reforms to Human Services – Productivity Commission Issues Paper (December 2016) Chapter 4 Social Housing in the Issues paper is disappointing for it chooses to ignore the co-operative housing option and, instead, refers in general terms to social housing and sometimes to government and non-government housing.

Co-operative identity, values & principles

Definition

A co-operative is an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise.

Values

Co-operatives are based on the values of **self-help, self-responsibility, democracy, equality, equity and solidarity**. In the tradition of their founders, co-operative members believe in the ethical values of honesty, openness, social responsibility and caring for others.

Principles

The co-operative principles are guidelines by which co-operatives put their values into practice.

1. Voluntary and Open Membership

Co-operatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.

2. Democratic Member Control

Co-operatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are

accountable to the membership. In primary co-operatives members have equal voting rights (one member, one vote) and co-operatives at other levels are also organised in a democratic manner.

3. Member Economic Participation

Members contribute equitably to, and democratically control, the capital of their co-operative. At least part of that capital is usually the common property of the co-operative. Members usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: developing their co-operative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the co-operative; and supporting other activities approved by the membership.

4. Autonomy and Independence

Co-operatives are autonomous, self-help organisations controlled by their members. If they enter into agreements with other organisations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their co-operative autonomy.

5. Education, Training and Information

Co-operatives provide education and training for their members, elected representatives, managers, and employees so they can contribute effectively to the development of their co-operatives. They inform the general public - particularly young people and opinion leaders - about the nature and benefits of co-operation.

6. Co-operation among Co-operatives

Co-operatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional and international structures.

7. Concern for Community

Co-operatives work for the sustainable development of their communities through policies approved by their members.

Conclusion

Freedom from victimisation is protected by 18C and 18D but it does not facilitate freedom of speech. Critics of 18C, however, seek to change 18C to promote their freedom of speech. But, then, the advocates of change are usually gatekeepers who already have platforms to exercise their freedom of speech and are not concerned with the freedom of speech of others except to suggest others have access to the post-truth option of social media.

David Griffiths

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He was Chairman (1997-2001) and is Secretary, Co-operatives Victoria (2001-) He was Chairman (2011) and Secretary (2008 – 2013), Co-operatives Australia He was a member of the Ministerial Advisory Committee on Co-operation (1982-1985) and Co-ordinator, Co-operative Development Program, Ministry of Employment and Training (1982-1985) He is a Lifetime Member, National Co-operative Business Association (USA)